

In the High Court for the States of Punjab and Haryana, at Chandigarh.

RSA No.1840 of 1998 (O&M)
Decided on April 30,2007.

Balram Singh -- Appellant

vs.

Surjan Singh and others -- Respondents.

Present: Ms. Manjit Kaur, Advocate, for the appellant.

Mr. G. S. Ghuman, Advocate, for respondent No.1 to 3.

Pritam Pal, J: (Oral)

This Regular Second appeal by the plaintiff, is directed against judgment and decree dated April 27,1994, passed by Sub Judge Ist Class, Abohar, whereby a suit for declaration filed by him (plaintiff) was dismissed under Order 17 rule 3 of Code of Civil Procedure as the plaintiff had failed to adduce any evidence and, thereafter, appeal of the plaintiff was also dismissed vide judgment and decree dated January 27,1998, passed by learned first Appellate Court.

Without going into any further details, suffice it to say that earlier a revision was filed by the defendants/respondents in the High Court and ultimately, the following order was passed on January 18,1994:-

“ In a pending suit, plaintiff made an application to prove

Memorandum dated March 28,1966 and Sale deed dated 16.1.1990 by way of leading secondary evidence. In order to establish loss of document, plaintiff summoned defendants No. 3 and 8, who were stated to be in possession of these documents. Before defendants No. 3 and 8 could come present with the documents, trial Court allowed the plaintiff to prove these documents by way of secondary evidence. This order cannot be sustained for the reason that before secondary evidence is allowed, parties were required to establish the loss of documents and that could have been done if defendant Nos. 3 and 8 had come to the witness box witness to state that these documents are not in their possession.

Consequently, the order under revision is set aside, it shall be open to the plaintiff to summon defendants No. 3 and 8 with the documents and in case, they fail to produce the same, it shall again be open to the plaintiff to make an appropriate application for leading secondary evidence, which shall be considered after obtaining reply from the defendants.

Parties through their counsel are directed to appear before the trial Court on 10.2.1994.

Civil Revision stands disposed of accordingly”.

In this case, the trial Court record has already been summoned and now the same has been examined by me. The impugned judgments and decrees passed by the Courts below are not sustainable, simply, for the reason that compliance of the aforesaid order passed by the High Court was not made by the learned trial Court before passing the impugned judgment inasmuch as a perusal of the trial Court file shows that on April 27,1994, in compliance of the order passed by the High Court, an

application was moved by the plaintiff/appellant for issuance of a direction to defendant Nos. 3 and 8 to produce the memorandum of family settlement dated March 28,1965 and Sale deed dated January 16,1990, which were stated to be in their possession. The trial Court without deciding the said application filed by the plaintiff/appellant, straight-way passed the impugned judgment under Order 17 Rule 3 of C.P.C., which is contrary to the direction of the High Court given vide order dated January 18,1994. Not only that the trial Court even failed to mention any reason as to why the application dated April 27,1994, was not first disposed of before passing the final judgment. Thus, the impugned judgments and decrees passed by the Courts below are held to be illegal and contrary to the direction of the High Court contained in the aforesaid order dated January 18,1994.

Accordingly, this Regular Second Appeal is allowed and the impugned judgments and decrees are set set aside and the case is remitted to the trial court for disposal in accordance with law after making the compliance of the aforesaid order passed by the High court. In the circumstances of the case, the parties are left to bear their own costs.

April 30,2007
RR

(Pritam Pal)
Judge